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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

IRENE VIRGINIA HALL,

Defendant and Appellant.

B205299

(Los Angeles County
Super. Ct. No. LA055940)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Kathryne A. Stoltz, Judge. Affirmed with directions.

John L. Staley, under appointment by the Court of Appeal, for Defendant and
Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Yun K. Lee
and Susan M. Kim, Deputy Attorneys General, for Plaintiff and Respondent.

Irene Hall appeals from the judgment entered following a jury trial in which she was convicted of seven counts of identify theft, four counts of making false financial statements, three counts of forgery, and one count of grand theft by embezzlement with a further finding that the amount involved exceeded \$50,000. Defendant contends that the trial court erred prejudicially in failing to instruct on accomplice liability. The Attorney General notes an inconsistency between the trial court's oral pronouncement of judgment as compared with the minute order and abstract of judgment. We affirm the judgment and order that the abstract of judgment be corrected to conform with the trial court's oral pronouncement.

BACKGROUND

As of January 2005, defendant, a financial analyst, and Daisy Valerio, a manicurist, were friends. Valerio had recently separated from her husband and was about to file for divorce. Valerio wanted financial assistance from defendant, who agreed to provide it in exchange for manicurist services from Valerio. As part of the agreement, Valerio's mail was forwarded to defendant's residence to ensure that Valerio's husband would not tamper with it. Valerio also opened a bank account through which defendant could pay Valerio's bills by computer.

From February through July 2005, defendant assumed Valerio's identity without Valerio's knowledge and engaged in a series of fraudulent transactions. On several occasions, defendant forged Valerio's name on checks. In addition, defendant secured credit cards in Valerio's name and made unauthorized purchases with these and other of Valerio's credit cards.

Testifying in her own behalf, defendant denied any wrongdoing and asserted that Valerio was sophisticated in financial matters. Reviewing the transactions, defendant claimed that each was entered with Valerio's knowledge and consent. Defendant also called witnesses who testified that she was honest and trustworthy.

Defendant was sentenced to three years in state prison, to be served in a restitution center. Restitution of \$56,109.38 was ordered in favor of Valerio and restitution of almost \$25,000 was ordered in favor of seven corporate victims.

DISCUSSION

1. Accomplice Instruction

Four of the 15 counts of which defendant was convicted were for making false financial statements in credit card applications (counts 2, 5, 8, and 14). These counts were supported by evidence that Valerio did not authorize the applications that defendant submitted in Valerio's name and that the applications grossly overstated Valerio's income in an effort to secure higher credit limits. Defendant testified that Valerio not only authorized the applications but also participated in preparing them.

An accomplice is "one who is liable to prosecution for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given." (Pen. Code, § 1111.) Defendant argues that based on her testimony claiming that Valerio participated in the credit card applications, Valerio was arguably an accomplice in counts 2, 5, 8, and 14, thereby triggering a sua sponte duty for the trial court to instruct on accomplice liability under CALCRIM No. 334.¹ (*People v.*

¹ CALCRIM No. 334 provides in relevant part:

"Before you may consider the (statement/ [or] testimony) of _____ as evidence against (the defendant/ _____) [regarding the crime[s] of _____], you must decide whether _____ (was/were) [an] accomplice[s] [to (that/those) crime[s]]. A person is an *accomplice* if he or she is subject to prosecution for the identical crime charged against the defendant. Someone is subject to prosecution if he or she personally committed the crime or if:

"1. He or she knew of the criminal purpose of the person who committed the crime;

"AND

"2. He or she intended to, and did in fact, (aid, facilitate, promote, encourage, or instigate the commission of the crime[;]/ [or] participate in a criminal conspiracy to commit the crime).

"The burden is on the defendant to prove that it is more likely than not that _____ (was/were) [an] accomplice[s].

"[An accomplice does not need to be present when the crime is committed. On the other hand, a person is not an accomplice just because he or she is present at the scene of a crime, even if he or she knows that a crime will be committed or is being committed and does nothing to stop it.] [¶] . . . [¶]

(footnote continued on next page)

Tobias (2001) 25 Cal.4th 327, 331.) Defendant further argues that the trial court's failure to so instruct requires that the judgment be reversed. We disagree.

Even accepting that an accomplice instruction may have been required, defendant was not prejudiced. Defendant does not dispute that there was ample corroboration of

(footnote continued from previous page)

“[A person may be an accomplice even if he or she is not actually prosecuted for the crime.] [¶] . . . [¶]

“If you decide that a (declarant/ [or] witness) was not an accomplice, then supporting evidence is not required and you should evaluate his or her (statement/ [or] testimony) as you would that of any other witness.

“If you decide that a (declarant/ [or] witness) was an accomplice, then you may not convict the defendant of _____ based on his or her (statement/ [or] testimony) alone. You may use the (statement/ [or] testimony) of an accomplice to convict the defendant only if:

“1. The accomplice's (statement/ [or] testimony) is supported by other evidence that you believe;

“2. That supporting evidence is independent of the accomplice's (statement/ [or] testimony);

“AND

“3. That supporting evidence tends to connect the defendant to the commission of the crime[s].

“Supporting evidence, however, may be slight. It does not need to be enough, by itself, to prove that the defendant is guilty of the charged crime[s], and it does not need to support every fact (mentioned by the accomplice in the statement/ [or] about which the accomplice testified). On the other hand, it is not enough if the supporting evidence merely shows that a crime was committed or the circumstances of its commission. The supporting evidence must tend to connect the defendant to the commission of the crime.

“[The evidence needed to support the (statement/ [or] testimony) of one accomplice cannot be provided by the (statement/ [or] testimony) of another accomplice.]

“*Any (statement/ [or] testimony) of an accomplice that tends to incriminate the defendant should be viewed with caution. You may not, however, arbitrarily disregard it. You should give that (statement/ [or] testimony) the weight you think it deserves after examining it with care and caution and in the light of all the other evidence.*” (Italics added.)

Valerio's testimony. Rather, she focuses on the last paragraph of the instruction, which admonishes that the testimony of an accomplice "should be viewed with caution."²

As stated in the Bench Notes to CALCRIM No. 334, "If the witness was an accomplice to only one or some of the crimes he or she testified about, the corroboration requirement only applies to those crimes and not to other crimes he or she may have testified about. (*People v. Wynkoop* (1958) 165 Cal.App.2d 540, 546 [].) In such cases, the court may insert the specific crime or crimes requiring corroboration in the first sentence." (Bench Notes to CALCRIM No. 334 (2008) p. 104.) Here, had the accomplice instruction been given, it would have specified that it pertained only to counts 2, 5, 8, and 14, and not to any other counts with which defendant was charged.

The trial was a credibility contest between Valerio and defendant. But evidence going to the 11 other counts of which defendant was found guilty and which did not implicate accomplice liability cannot be distinguished meaningfully from the four counts to which defendant was potentially an accomplice. Given the conflicting nature of the evidence presented, we conclude that if the jury believed Valerio and disbelieved defendant as to the 11 counts to which the accomplice rule did not apply, it is not reasonably probable the jury would consider Valerio to be an accomplice or that a simple admonition to view Valerio's testimony with caution would have affected the verdict as to counts 2, 5, 8, and 14. (*People v. Whisenhunt* (2008) 44 Cal.4th 174, 214; *People v. Watson* (1956) 46 Cal.2d 818, 836.) Accordingly, defendant's contention of prejudicial error must be rejected.

² Defendant erroneously characterizes the rule as requiring that an accomplice's testimony be viewed with "distrust." Use of the word "distrust" was rejected by the Supreme Court in *People v. Guiuan* (1998) 18 Cal.4th 558, 569. Based on *Guiuan*, "distrust" was removed from CALJIC No. 3.18, which is a predecessor instruction to CALCRIM No. 334.

2. Abstract of Judgment

In pronouncing judgment, the trial court stated: “I am going to impose the mid term in state prison on . . . count 17, the embezzlement charge, of two years in state prison, plus one consecutive year for the amount allegation of it being over \$50,000, for a total of three years in state prison. [¶] On all the remaining counts that [defendant] was convicted of, the court will impose the mid term of two years and stay that pursuant to Penal Code section 654. I do believe that the embezzlement count given the time frame that it encompassed encompasses all the other counts.”

Inconsistent with this oral pronouncement, the minute order of the sentencing hearing and the abstract of judgment reflect that sentences on the other counts were imposed concurrently with count 17 and not stayed. As a general rule, a trial court’s oral pronouncement, as reflected in the reporter’s transcript, controls. (See *People v. Boyde* (1988) 46 Cal.3d 212, 256; *People v. Mesa* (1975) 14 Cal.3d 466, 471; *People v. Crenshaw* (1992) 9 Cal.App.4th 1403, 1415–1416; *People v. Martinez* (1980) 109 Cal.App.3d 851, 855.) The general rule should apply here.

“[I]f the minutes or abstract of judgment fails to reflect the judgment pronounced by the court, the error is clerical and the record can be corrected at any time to make it reflect the true facts.” (*People v. Little* (1993) 19 Cal.App.4th 449, 452.) Accordingly, we shall order that the abstract of judgment be corrected to reflect that sentences on counts other than No. 17 were stayed pursuant to Penal Code section 654 rather than imposed concurrently.

DISPOSITION

The judgment is affirmed and the trial court is ordered to prepare a corrected abstract of judgment which reflects that sentences on all counts except count 17 were stayed pursuant to Penal Code section 654 and to forward a copy of the correct abstract to the Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

WEISBERG, J.*

* Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 21 of the California Constitution.